

1984 WL 249932 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 17, 1984

*1 Mr. Michael L. Harlan
Director of Parks and Recreation
Richland County Recreation Commission
5819 Shakespeare Road
Columbia, South Carolina 29204

Dear Mr. Harlan:

By your letter of July 5, 1984, you have asked whether board members of a recreation commission would be eligible to simultaneously serve on a county advisory committee appointed pursuant to the new Accommodations Tax Act without violating the dual office holding provisions of the Constitution of the State of South Carolina.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980).

The Richland County Recreation Commission was created by Act No. 873, 1960 Acts and Joint Resolutions, which Act has been amended several times. The present name of the Commission was established by Act No. 317, 1969 Acts and Joint Resolutions. Act No. 581 of 1976, the most recent amendment, provides for the appointment of members of the commission upon recommendation of the majority of the legislative delegation. Powers and duties are specified by Act No. 873 of 1960 and further by Act No. 317 of 1965. This Office has concluded on numerous occasions that members of county recreation commissions hold an office for dual office holding purposes; see, for example, [Ops. Atty. Gen.](#) dated August 4, 1982; October 21, 1980; February 3, 1978; and November 18, 1977 (copies enclosed). There appears to be no reason to distinguish a member of the Richland County Recreation Commission from any of the recreation commissions previously examined; thus, a member of the Commission would be said to hold an office for dual office holding purposes.

The Accommodations Tax Act (H.2186, R347) is Act No. 316 of 1984. The Act levies a sales tax of two percent on gross proceeds on the rental of transient accommodations and provides a formula for the distribution of tax to counties and municipalities. A portion of the Act adds [Section 12-35-720 to the Code of Laws of South Carolina \(1976\)](#); part (3) provides for an advisory committee, as follows:

A municipality or county receiving revenue from the accommodations tax must appoint an advisory committee to make recommendations on the expenditure of revenue generated from the accommodations tax. The advisory committee shall consist of not less than five members with a majority of the committee members being selected from the hospitality industry of the municipality or county receiving the revenue.

*2 Applying the standards from [Sanders](#) and [Crenshaw](#), *supra*, a member of such an advisory committee would not appear to hold an office. The members are authorized only to make recommendations as to expenditure of revenues; they are not charged with the exercise of a portion of the sovereign power of the State. A statute does establish the position of committee member and does specify a qualification for some members, in that a majority must be from the hospitality industry of the county or municipality; thus, for some members, no qualifications are specified. Neither tenure nor salary is provided for, and no oath of

office is required. The position would not be an office, and one who is a member of the Richland County Recreation Commission could serve on such an advisory committee without contravening the dual office holding provisions of the state Constitution.

It should be pointed out that this opinion concerning the advisory committee is consistent with previous opinions of this Office holding that members of advisory bodies do not hold an office for dual office holding purposes. See, Ops. Atty. Gen. dated April 26, 1977; March 11, 1982; March 1, 1983; and April 12, 1977 (copies enclosed).

We trust that we have satisfactorily responded to your inquiry. If you need clarification or additional information, please advise us.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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